

**OPINION
43-60**

May 4, 1943 (OPINION)

INSANE

RE: Estates of: Estate of Hubert J. Hansen, Deceased.

Your letter of April 29th addressed to the Attorney General has been received relative to the above entitled estate.

You state that as attorney for the administrator, you are about to close the above-named estate. The surviving widow of the deceased is in the state hospital at Jamestown and has been there for five or six years. The County of McLean has filed a claim against the estate of Hubert J. Hansen, deceased for care and treatment of Mrs. Hansen, widow, at the state hospital. You inquire whether or not this claim is valid against the estate of the deceased, her husband.

Section 2579 of the Supplement to the Compiled Laws as amended by chapter 143 of the Session laws of 1937, deals with expenses for the treatment and maintenance of patients at the Jamestown Hospital, and reads as follows:

"EXPENSES CHARGEABLE AGAINST THE ESTATE OF INSANE PERSONS.) The amount of expenses incurred by any county in this state, or by the state, for treatment and maintenance of any insane person in the State Hospital for the Insane shall be charged against the estate of such insane person; provided, that the insane person has no heirs within the United States dependent upon said estate for support; and provided, further, that no real property shall be sold during the life of the insane person, except for the maintenance and support of the family of said insane person, or when it is shown to be for the best interests of the estate, and in either case only upon order of the proper court and with the consent of the board of County Commissioners of the proper county, and further provided that no personal property shall be sold under five years from the date of sending such insane person to the state hospital for the insane, unless by order of the proper court, where such property is liable to deteriorate in value during the time above specified, and when sold as above the county court shall order the proceeds thereof to be safely invested for the benefit of such insane person, or be used for the support and maintenance of the family of such insane person."

You will observe that the statute quoted provides that the amount of expense incurred by the county or by the state for treatment of patients at the state hospital is chargeable against the estate of such patient, except where the patient may have heirs within the

United States dependent upon his estate for support. There is no provision in the statute quoted, nor in any other statute of which we are aware, which makes the estate of one spouse liable for care and treatment at the Jamestown Hospital, for the other spouse.

However, Mrs. Hansen, as the widow of Hubert J. Hansen, deceased, is entitled to a share of his estate as provided by law, and if upon her death, she leaves any estate, the claim of the county would be a valid claim against her estate subject to the limitations of said section 2579 cupra, as amended.

ALVIN C. STRUTZ
Attorney General